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RESTRICTIVE COVENANT
FOR CONDITIONAL USE PERMIT

State of Oregon, County of Klamath
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Linda Smith, County Clerk
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Know all men by these presents that Mary Jo McDonald, in consideration of the approval by Klamath County, Oregon, of Conditional Use Permit 38-03, on the following described real property:

Portion Section 22, T.38S, R.9EWM; Tax Acct. 3809-2200-600

Hereby recognizes(s) the rights of adjacent and nearby landowners to conduct farm and forest operations consistent with accepted farm practices and the Oregon Forest Practices Act and record this restrictive covenant prohibiting the permit grantee and successors in interest from filing complaint of any type or kind concerning the presently accepted resource management practices and farm uses that may occur on nearby lands devoted to resource use.

Mary Jo McDonald
Mary Jo McDonald

State of OREGON

County of Klamath

This instrument was acknowledged before me on June 1, 2005

By Stacy M. Howard
(Notary Public Printed Name)

Stacy M. Howard
Notary Public- State of Oregon



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Over the Counter:
Ione Thomsen

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request for a)
Conditional Use Permit by:)

Case No.: CUP 15-05

Mary Jo McDonald)
_____)

ORDER

1. NATURE OF THE REQUEST:

The applicant has applied for a permit to establish as a "lot of record" a "forest dwelling" on 5.45 acres zoned Forestry/Range. The Hearings Officer heard this request on May 6, 2005. The request was reviewed for conformance with Klamath County Land Development Code (KCLDC) Article 55.

2. NAMES OF THE PARTICIPANTS:

The Hearings Officer reviewing this application is Matthew T. Parks. The Applicant appeared and offered testimony in support of the application. The Planning Department was represented by Karen Burg.

3. LOCATION:

The property under consideration is located generally at the west end of Plum Hill Road off of Old Fort Road. The legal description of this property is portion Sec. 22, T. 38S, R. 9EWM; T.A. 3809-22-600.

4. MATERIAL CONSIDERED:

All evidence presented, the Staff Report, and all testimony received was considered by the Hearings Officer.

5. FINDINGS:

The Hearings Officer FINDS AS FOLLOWS:

- a. The development of a single-family dwelling is not included in the Permitted Uses for this zoning; however, LDC Article 55 conditionally permits residences to be built subject to certain findings and conditions.
- b. The parcel upon which the dwelling will be placed was legally created.
- c. There are no other dwellings existing or approved in the property and there is no deed restrictions existing that would preclude the parcel from development or from being used to total the required acreage.
- d. Approval of the dwelling will not exceed the facilities services or capabilities of the area. The site currently has been approved for on-site septic disposal. Applicant proposes to drill a well for domestic water use. Fire protection is to be provided by Klamath County.

Fire District #1. Therefore, the threat of fire spreading to resource productive properties is mitigated.

- e. Approval of the dwelling will not create conditions of circumstances contrary to the purposes of intent of the county comprehensive plan or land use regulations. The proposed dwelling is in conformance with all standards and criteria of the KCLDC.
- f. The dominate uses in the area include rural residential. The location of residence on the parcels will not materially alter the stability of the overall land use pattern in the area. The proposed dwelling and activities will not force a significant change in or significantly increase the cost of accepted farming or forestry practices on nearby lands devoted to farm or forestry use. The proposed location of the dwelling and accessory structures will have virtually no impact on nearby farm and forestlands and operations.
- g. The proposed dwelling will be located on land that is generally unsuitable and impractical for commercial timber or agriculture use considering the parcel size location, and poor soil conditions. The site is too small, and the adjacent property ownership is too divided, for viable forest management or farming activity. No loss of productive resource land will result from granting this request, and the proposed dwelling does not compromise the commercial forestland base in Klamath County.

6. ORDER:

Therefore, it is hereby ordered that the applicant's request to establish as a "lot of record" a "forest dwelling" a 5.45 acre parcel zoned Forestry/Range, is APPROVED, subject to the following conditions:

- a. Applicant must provide proof of clearance from the Klamath County Environmental Health Department and Building Department within four (4) years from the date of this order. Failure to timely provide such proof will void this approval.
- b. Applicant must file a restrictive covenant in the Klamath County deed records recognizing the rights of adjacent and nearby landowners to conduct farm and forest operations consistent with accepted farm practices and the Oregon Forest Practices Act and prohibiting the permit grantee of successors in interest, from filing and complaint of any type or kind concerning the presently accepted resource management practices and farm uses that may occur on nearby land devoted to commercial or other resource use. The applicant shall provide evidence to the Planning Department of such action.
- c. Applicant shall receive approval for and develop an on-site well authorized or approved by the state Water Resources Department, and provide proof to the Planning Department that this requirement can be met prior to drilling/construction.
- d. Applicant shall submit a site plan, prepared pursuant to Article 41 of the LDC, be reviewed and approved by the Planning Department prior to construction, and that such site plan be in compliance with siting and development standards of KCLDC Article 69, Rural/Wildland Fire Safety Standards. The dwelling and accessory structures sited on the parcel must also comply with the requirements of KCLDC 55.060(G).

- e. Applicant **must demonstrate compliance with all requirements** of KCLDC Article 69 Rural/Wildland Fire Safety Standards or this approval shall be considered void, including water supply systems as provide in KCLDC Art. 69.050.
- f. Applicant must request that the parcel be disqualified for special assessment under ORS 308.370, 321.352, 321.730 or 321.815, and provide proof to the Planning Department.
- g. All required building and placement permits be obtained within a period of four (4) years from the date of this order, unless an extensions is obtained for the additional period of two (2) years.
- i. Applicant shall comply with development standards of Article 57.

DATED May 25, 2005.


Matthew T. Parks
Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified that this Order may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code, together with the fee required, **within seven (7) days** of the mailing of this Order. Failure to file a Notice of Appeal within the time allowed will result in loss of your right to appeal this decision.